

July 22, 2009

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Roger A. Powell

Date of Filing: July 7, 2009

Case Number: TFA-0321

On July 7, 2009, Roger A. Powell (Appellant) filed an Appeal from a determination issued to him on June 10, 2009, by the National Nuclear Security Administration Service Center (NNSA/SC) of the Department of Energy (DOE). In that determination, NNSA/SC partially responded to a request for information the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy in 10 C.F.R. Part 1004. This Appeal, if granted, would require NNSA/SC to conduct a further search for documents responsive to the Appellant's request.

I. Background

On February 22, 2009, the Appellant requested "copies of internal files and memorandum regarding [DOE] claim AR 131-91." Request Letter dated February 22, 2009, from Appellant to Kevin Hagerty, Director, Office of Information Resources, DOE. On March 25, 2009, the Office of Information Resources transferred the request to NNSA/SC. E-mail dated July 8, 2009, at Attachment 1, from Christina Hamblen, NNSA/SC, to Janet Fishman, Office of Hearings and Appeals (OHA), DOE. On June 10, 2009, NNSA/SC's responded to the Appellant's request, stating that it had not located any responsive documents, but the request had been transferred to DOE Headquarters for an additional search. Determination Letter dated June 10, 2009, from Carolyn Becknell, NNSA/SC, to Appellant. On July 7, 2009, the Appellant appealed, asking that the search continue. Appeal Letter dated June 27, 2009, from Appellant, to Director, Office of Hearings and Appeals (OHA), DOE (Appeal Letter). On July 13, 2009, the Appellant provided additional information to assist in the search. Supplemental Letter dated July 13, 2009, from Appellant to Janet Fishman, Attorney-Examiner, OHA.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Bowers*, Case No. TFA-0138 (2006); *Doris M. Harthun*, Case No. TFA-0015 (2003).^{1/}

We contacted NNSA/SC to determine what type of search was conducted. NNSA/SC indicated that both the Sandia Site Office (SSO) and the Livermore Site Office (LSO) conducted searches. SSO conducted a search of both SSO and Sandia National Laboratory (SNL). SSO conducted a computer search using the claim number and determined that it had no responsive documents. SNL conducted a search of its corporate archives and inactive records storage, but no responsive documents were located. It also searched its technical library catalogs, both classified and unclassified; again, no responsive documents were located. The legal department at SSO stated, however, that DOE Headquarters “had complete responsibility for both the patent and the handling of the administrative claim.” E-mail dated July 14, 2009, at Attachment 1, from Christina Hamblen, NNSA/SC, to Janet Fishman, OHA. LSO indicated that its Patent Office had been transferred to NNSA/SC. Nevertheless, LSO contacted that office and requested that a search be conducted based on both the patent number and the claim number. No responsive documents were found. LSO also contacted Lawrence Livermore National Laboratory (LLNL). LLNL checked with its Industrial Partnership Office and the Patent Office in the General Counsel’s office. LLNL added that the requested patent was not an LLNL patent. LLNL found no responsive documents. We believe the search that NNSA/SC conducted was reasonably calculated to uncover the requested information in those offices most likely to have the information.

NNSA/SC did indicate in its determination letter that DOE Headquarters may have responsive information. We have confirmed that the request has been transferred to DOE Headquarters and a search is being conducted. E-mail dated July 8, 2009, from Christina Hamblen to Janet Fishman. DOE Headquarters will issue a determination at the conclusion of its search. Upon receipt of that determination, the Appellant will have the opportunity to appeal DOE Headquarter’s determination.

III. Conclusion

^{1/} All OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

The search conducted by NNSA/SC was reasonably calculated to uncover all documents responsive to the Appellant's request. Accordingly, this Appeal will be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Roger A. Powell, Case No. TFA-0321, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review. Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: July 22, 2009